



BILLING CODE 3410-XY

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4279

RIN 0570-AA87

Definitions and Abbreviations

AGENCY: Rural Business-Cooperative Service, Rural Utilities Service, USDA.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Rural Business-Cooperative Service is amending its regulations for the Business and Industry Guaranteed Loan Program to clarify that the Agency guarantee does not cover default and penalty interest or late charges. The Agency's regulations are currently silent on this issue. However, it has always been the Agency's policy not to pay out additional cost for default interest, penalty interest, and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. The Agency does permit the lender to charge default interest with prior Agency approval. By defining

"interest" in the definition section of the regulation and clarifying the Agency's policy as it relates to default interest, penalty interest, and late charge, this will avert any misunderstandings.

DATES: Comments on this proposed rule must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments to this proposed rule by any of the following methods:

- Federal eRulemaking Portal:

<http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, D.C. 20250-0742.

- Hand Delivery/Courier: Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, D.C.

20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. David Lewis, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3221, Washington, DC 20250-3221; e-mail: david.lewis@wdc.usda.gov; telephone (202) 690-0797.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the Business and Industry Guaranteed Loan Program is 10.768. The Catalog of Federal Domestic Assistance Program number assigned to the Biorefinery Assistance is 10.865. The Catalog of Federal Domestic

Assistance Program number assigned to the Rural Energy for America Program is 10.868.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Executive Order 12372, Intergovernmental Consultation

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Consultation will be completed at the time of the action performed.

Executive Order 12988, Civil Justice

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all

state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Agency made this determination based on the fact that this regulation only

impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which

Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at AIAN@wdc.usda.gov.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection activities associated with this rule are covered under the Business and Industry Guaranteed Loan Program, OMB Number: 0570-0017.

This rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and other purposes.

I. Background

The Agency reviewed 7 CFR 4279.2 which is composed of two paragraphs, the first of which is pertinent. Section

4279.2(a) discusses the definitions, which has thirty seven terms use in the Guaranteed Loanmaking. The definitions and abbreviations contained in §4279.2 also apply to the Business and Industry Guaranteed Loan Servicing regulations and, unless otherwise noted, the Biorefinery Assistance Loan Program and the Rural Energy for America Program. Currently, the Agency regulations do not define "interest", "default interest", "penalty interest" or "late charges". However, it is the Agency's policy not to pay out additional cost for default interest, penalty interest and late charges calculated and submitted on a final report of loss claim under the Loan Note Guarantee. However, the lender's Promissory Note may contain provisions for default, penalty interest, or late charges with prior Agency approval. These charges must be customary and reasonable. Accordingly, the Agency is making the proposed changes in this rule.

II. Discussion of Change

The Agency is revising §4279.2(a), to address the situation discussed in the "Background" section. Specifically, the Agency is adding a paragraph in § 4287.2(a), after the term "Holder" and before the term Interim Financing, which will define "Interest." The

change being made by this rule is to clarify that "interest" does not include default or penalty interest, or late fees. The lender may charge the borrower these fees with prior Agency approval.

List of Subjects in 7 CFR Part 4279

Business and industry, Loan programs, Rural development assistance.

For the reasons set forth in the preamble, chapter XLII, title 7, of the Code of Federal Regulations is proposed to be amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE
PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

Subpart A - General

2. Paragraph (a) of § 4279.2 is amended by adding a new definition of Interest, to read as follows:

§ 4279.2 Definitions and abbreviations.

* * * * *

Interest. A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. "Interest" does not include default or penalty interest or late fees or charges. The lender may charge these fees and interest with prior Agency approval, but they are not covered by the Loan Note Guarantee.

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Dallas Tonsager
Under Secretary
Rural Development

__February 2, 2012__

Date

Date: 02/13/2012]